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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Misc. No.34310-M of 2006
Date of decision: 6.12.2006

Anu Goyal @ Antu **...Petitioner**

Versus

State of Punjab and others **...Respondents**

CORAM: HON'BLE MR.JUSTICE ADARSH KUMAR GOEL

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Present: Mr.OPS Tanwar, Advocate for the petitioner

Mr.Amol Rattan Singh, Additional Advocate General, Punjab.

Mr.Arun Bansal, Advocate for respondent no.2.

Mr.Parma Nand, Advocate for respondent no.3.

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ORDER:

This petition has been filed inter-alia, for cancelling the anticipatory bail granted to respondent No.3 Smt.Kamlesh Rani vide order of this Court dated 1.9.2005 in Criminal Misc. No.31694-M of 2005. The said order reads as under:-

> "Learned counsel for the petitioner says that his client Aridaman Goel, who is present in Court and who is husband of the complainant, will be paying to the complainant a sum of Rs.6000/- per month to be adjusted towards her claim for maintenance for herself and the minor child from 1.9.2005 The payment will be without prejudice to rights and contentions of the parties and will not prejudice any pending proceedings.
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> Having regard to the circumstances of the case and without expressing any final opinion on the merits of the case, petitioner is granted anticipatory bail till conclusion of investigation or three months whichever is later during which the petitioner will be free to apply for regular bail to the concerned court in accordance

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with law.

In the event of arrest, the petitioner will be released on bail on furnishing bail bonds to the satisfaction of the arresting officer within two weeks from today on the conditions that she will not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer, she will not interfere with the prosecution evidence directly of indirectly; she will not leave the country without the previous permission of the court; she will associate with the investigation as and when called by the police and she will surrender their passport if any.

In case custodial interrogation of the petitioner is considered necessary at a later stage the State will be at liberty to move this Court.

The petition is disposed of."

It is stated in the petition that while granting anticipatory bail to respondent no.3, Court took into consideration the statement made by the husband of the petitioner, who is son of respondent no.3 that he will be paying her a sum of Rs.6000/- per month to be adjusted towards her claim for maintenance for herself and the minor child from 1.9.2005 without prejudice to rights and contentions of the parties and will not prejudice any pending proceedings.

The said statement was, however, not honoured and thus the benefit was taken by misleading the Court, which could not be allowed to continue. Learned counsel for respondent no.2 relies upon the order of the Hon'ble Supreme Court in **Biman Chatterjee Vs.Sanchita Chatterjee & another AIR 2004 SC 1699** wherein it was observed as under:-

"Having heard the learned counsel for the parties, we are of the opinion that the High Court was not justified in cancelling the bail on the ground that the appellant had violated the terms of the compromise. Though in the original order granting bail there is a reference to an agreement of the parties to have a talk of compromise

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through the media of well wishers, there is no submission made to the court that there will be a compromise or that the appellant would take back his wife. Be that as it may, in our opinion, the courts below could not have cancelled the bail solely on the ground that the appellant had failed to keep up his promise made to the court. Here we hasten to observe first of all from the material on record, we do not find that there was any compromise arrived at between the parties at all, hence, question of fulfilling the terms of such compromise does not arise. That apart non-fulfilment of the terms of the compromise cannot be the basis of granting or cancelling a bail. The grant of bail under the Criminal Procedure Code is governed by the provision of Chapter XXXIII of the Code and the provision therein does not contemplate either granting of a bail on the basis of an assurance of a compromise or cancellation of a bail for violation of the terms of such compromise. What the Court has to bear in mind while granting bail is what is provided for in Section 437 of the said Code. In our opinion, having granted the bail under the said provision of law, it is not open to the trial court or the High Court to cancel the same on a ground alien to the grounds mentioned for cancellation of bail in the said provision of law."

In the present case cancellation of bail is not sought on the ground that terms of compromise were not fulfilled but on the ground that benefit has been taken by making a statement which was not intended to be honoured and was not honoured. At the time of granting anticipatory bail in case of alleged victim of harassment for dowry as in the present case, consideration of rehabilitation of victim is not irrelevant and if any assurance in that regard is given, the same has to be honoured.

In **Chakrawarti Prasad Vs. State of Bihar** (2002) 10 Supreme Court Cases, 390 payments made towards electricity charges were taken into account for grant of anticipatory bail. Judgment relied upon is, thus, distinguishable.

Learned counsel for respondent no.2 states that Smt.Kamlesh Rani

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has been granted regular bail on 3.10.2005 taking into account the order of anticipatory bail.

In view of above, anticipatory bail order having ceased to operate, there is no scope of cancelling anticipatory bail. However, it is made clear that the petitioner will be at liberty to seek cancellation of regular bail granted to Smt.Kamlesh Rani since order of regular bail was granted only on the basis of order of anticipatory bail, which was obtained by making a statement, which was not honoured.

The petitioner will also be at liberty to take such other remedy as may be available for the conduct of respondents and for any rights which may flow from the statement made by respondent no.2 before this Court in accordance with law.

The petition is disposed of accordingly.

December 06,2006 **(Adarsh Kumar Goel)**
Pka **Judge**